

PT 98-19

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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LAKEFRONT	)		
SINGLE ROOM	)	Nos.	94-16-907
OCCUPANCY	)		94-16-945
CORPORATION,	)		through &
APPLICANT	)		including
	)		94-16-948
	)		and
	)		94-16-1718
	)		
	)		Real Estate Tax
	)		Exemptions for
	)		1994 Assessment Year
	)		
v.	)	P.I.N.S:	14-08-411-012
	)		14-17-104-010
	)		14-17-104-007
	)		14-17-110-019
	)		14-08-404-019
	)		14-08-404-020
	)		14-08-404-024
	)		14-08-404-025
	)		
	)		Cook County Parcels
	)		
ILLINOIS DEPARTMENT	)		
OF REVENUE	)		Alan I. Marcus
	)		Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Bennett P. Applegate of Schiff, Hardin & Waite on behalf of the Lakefront Single Occupancy Corporation.

**SYNOPSIS:** These proceedings raise the following issues: first, whether real estate identified by Cook County Parcel Index Numbers 14-08-411-012, 14-17-104-010, 14-17-104-007, 14-17-110-019, 14-08-404-019, 14-08-404-020, 14-08-404-024 and 14-08-404-025<sup>1</sup> (hereinafter collectively referred to as the "subject properties" or the "subject parcels") qualify for exemption under Public Act 88-660, passed by the General Assembly on June 30, 1994 and effective September 16, 1994; and if they do not, whether such parcels satisfy the ownership and use requirements necessary to obtain exemption from 1994 real estate taxes under 35 ILCS 200/15-65.<sup>2</sup> In relevant part, that statute provides as follows:

All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

The General Assembly amended Section 200/15-65 via enactment of Public Act 88-660. This provision, effective September 16, 1994, provides, in relevant part, that property otherwise qualifying for exemption under Section 200-15/65 shall not lose its exemption because the legal title is held:

... (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of

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1. In order to promote greater clarity and avoid undue repetition, I shall hereinafter refer to each of the only by the last six digits (i.e. the block and parcel numbers) of their respective Parcel Index Numbers. Thus, for example, Parcel Index Number 14-08-411-012 shall hereinafter be referred to as "411-012."

2. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986.<sup>3</sup>

The controversy arises as follows:

On January 19, 1995, Lakefront Single Room Occupancy Corporation (hereinafter the "applicant") filed six separate Real Estate Exemption Complaints with the Cook County Board of (Tax) Appeals (hereinafter the "Board") (Dept. Group. Ex. No. 1).

The Board reviewed each of the complaints and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that all the of the requested exemptions be denied. *Id.*

The Department docketed the Complaints as follows:

<b>Docket Number</b>	<b>Corresponding P.I.N.</b>
94-16-907	411-012
94-16-945	104-010
94-16-946	404-019 and 404-020
94-16-947	110-019
94-16-948	404-024 and 404-025
94-16-1718	104-007

Dept. Group Ex. No. 1.

The Department later accepted the above recommendations by issuing six certificates finding that the subject properties were not in exempt ownership and not in exempt use. (Dept. Group Ex. No. 2). Applicant subsequently filed timely requests for hearing as to each of these denials (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the subject properties not be exempt from 1994 real estate taxes.

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3. 26 U.S.C.A. § 42.

## **FINDINGS OF FACT:**<sup>4</sup>

### A. Preliminary Considerations

1. The Department's jurisdiction over these matters and its position therein, namely that none of the subject parcels were in exempt ownership or in exempt use during 1994, is established by the admission into evidence of Dept. Group Ex. Nos. 1, 2.
2. All of the subject properties are located in Chicago, Illinois. During 1994, all of these properties except parcels 404-024 and 404-025 were used for low or low to moderate income rental housing. Dept. Group Ex. No. 1; Tr. pp. 95-96.
3. Applicant was in the process of developing parcels 404-024 and 404-025 for low income housing throughout 1994. It did not house any tenants in these parcels during that time.<sup>5</sup> Tr. pp. 95-99

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4. I have divided the Findings of Fact into the following categories in order to promote greater clarity and reduce any confusion that results from the inherent complexities of this case: Preliminary Considerations (Findings of Fact 1 - 9); Ownership Issues (Findings of Fact 10 - 17); Use Issues (Findings of Fact 18 - 31); Applicant's Organizational and Financial Structure (Findings of Fact 32 - 37); Applicant's Operations (Findings of Fact 38 - 41); Organizational Structure of Applicant's Subsidiary Corporations (Findings of Fact 42 - 44); Organizational and Financial Structure of Related Limited Partnerships (Findings of Fact 45 - 51) and The Federal Low Income Housing Tax Credit Program (Findings of Fact 52 - 61).

5. For details about the nature and extent of this renovation project, *See*, Tr. pp. 95-99.

4. The individual rental units contained within the subject parcels occupy approximately 180 square feet apiece. They are equipped with a kitchenette and either a private bath or shared bath accommodations. Tr. p. 120.
5. Tenants occupying the rental units are formerly homeless individuals or persons in imminent peril of becoming homeless due to their respective economic situations. Tr. p. 115.
6. The tenant population is 60% male and 40% female, with 60% of all tenants being between the ages of 31 and 50. Tr. pp. 114-115.
7. Subgroups within the tenant population include the following: (1) 60% African-American; (2) 26% Caucasian; (3) 6% Hispanic; (4) 6% Asian; (5) 2% other ethnic groups; (6) approximately 7% have zero income; (7) 34% are chronically mentally ill; (8) 16% are veterans; (9) 24% suffer from substance abuse problems; and (10) another 2% are HIV-positive or suffer from AIDS. Tr. pp. 114-115, 119.
8. Applicant obtains tenants from client referrals, emergency shelters, transitional housing facilities, churches, social service agencies (both private and governmental) that serve the homeless and various other community organizations. It also advertises in local newspapers and relies on word of mouth. Tr. pp. 115, 119, 123.

9. The subject properties are located at the following addresses:

<b>P.I.N.(S)</b>	<b>CORRESPONDING ADDRESS</b>	<b>TITLED OWNER</b>
411-012	4946 N. Sheridan	Harold Washington Apartments Limited Partnership <sup>6</sup> (hereinafter "HWALP")
104-010	4707 N. Malden	4707 Malden Limited Partnership (hereinafter "4707")
404-019 and 404-020	5042-5046 N. Winthrop	5042 Winthrop Limited Partnership (hereinafter "Winthrop")
110-019	4626 N. Magnolia	Magnolia Limited Partnership (hereinafter "Magnolia")
404-024 and 404-025	5012-5016 N. Winthrop	Red Door Limited Partnership (hereinafter "Red Door")
104-007	2727 N. Malden	Applicant

Dept. Group Ex. No. 1; Applicant Ex. Nos. 18, 19, 21, 23, 25, 27, 28, 30.

**B. Ownership Issues**

10. HWALP acquired its ownership interest in parcel 411-012 via an assignment dated June 16, 1988. The assignment conveyed 100% of applicant's beneficial

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6. HWALP is one of six Illinois limited partnerships that hold various interests in the subject properties. For further information about these partnerships, their respective interests in the subject properties and their relationships to the applicant, *See*, Findings of Fact 38 - 51 *infra* at pp. 13-18.

interest in a land trust, which it in turn acquired by way of a quitclaim deed dated January 18, 1988. Applicant Ex. Nos. 18, 19.

11. Applicant acquired its ownership interest in parcel 104-007 via a deed in trust dated April 18, 1984. This deed affects the underlying ground, in which applicant obtained a fee title so that it could obtain financing for the project. Applicant Ex. No. 21; Tr. p. 62.
12. Applicant obtained such financing from the State of Illinois, which provided a grant for the underlying land. Tr. p. 62.
13. Malden Arms Limited Partnership (hereinafter "MALP") pays applicant an annual ground lease fee,<sup>7</sup> pursuant to which MALP operates the improvement located on parcel 104-007. *Id.*
14. 4707 acquired its ownership interest in parcel 104-010 via a quitclaim deed dated March 28, 1991. Applicant Ex. No. 23.
15. Magnolia acquired its ownership interest in parcel 110-019 via a quitclaim deed dated April 22, 1992. Applicant Ex. No. 25.
16. Red Door acquired its ownership interest in parcel 404-024 via a trustee's deed dated October 26, 1993. It obtained ownership of parcel 404-025 by way of a trustee's deed dated December 1, 1993. Applicant Ex. Nos. 27, 28.

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7. Applicant did not submit the ground lease itself into evidence. However, the audit (Applicant Ex. No. 5) indicates that the lease calls for MALP to rent the land from applicant (which holds the property in trust) for a term of 55 years. This document also indicates that the lease requires MALP to pay annual rental charges of \$5,000, due February 1<sup>st</sup> of each year with interest accruing at the rate of 10% compounded annually. Applicant Ex. No. 5.

17. Winthrop acquired ownership of parcels 404-019 and 404-020 via a trustee's deed dated October 13, 1992. Applicant Ex. No. 30.

C. Use Issues

18. All of the low-income rental units situated in the subject parcels are rented pursuant to leases.<sup>8</sup> Applicant Ex. No. 16.
19. Contract rent for all of the units in parcel 104-010 was \$397.00 per month in 1994. None of the tenants living therein paid full contract rent during that time. Their respective rental payments ranged from \$0.00 (i.e. 100% subsidized) to \$243.00. Average rental payment for the 62 occupied units was \$84.00. Average monthly rental for the entire building, which consists of the 62 occupied units plus 4 vacant apartments, was \$79.00. Applicant Ex. No. 23C.
20. Applicant has not and does not evict tenants for non-payment of rent. It does however, require that all prospective tenants submit to a screening process. Tr. pp. 118, 124-125.
21. This process begins with an application, which will be filled out for the prospective tenant if he/she is illiterate. Applicant then schedules the prospective tenant for an interview with a property manager and social worker within three weeks of the application. Tr. pp. 124-125, 128.
22. The interview enables the property manager to discover where (if anywhere) the prospective tenant has lived in the last two years. It also helps the social worker assess the individual's needs and problems, which may include a history of substance abuse. Tr. p. 125.



23. Applicant does not refuse occupancy to those who have no income or have been homeless for an extended period of time. It does nevertheless consider substance abuse one of the most important characteristics in determining whether to accept or refuse occupancy. *Id.*
24. Applicant also adheres to a policy requiring that prospective tenants not use any illegal drugs within six months of the date they seek occupancy. *Id.*
25. Following the interview, the property manager and social worker review the information, check references and make a determination about the prospective tenant's application within two weeks of the interview. Tr. pp. 126-128.
26. Applicant accepts only 5% of the applications it receives and bases most of its rejections on substance abuse problems. Tr. p.126.
27. Applicant does not immediately evict tenants whose substance abuse problems go undetected in the screening process. Rather, it offers these individuals treatment and asks them to leave only if they continue using illegal substances after therapy commences. Tr. pp. 127, 130.
28. Those accepted for occupancy are placed on a waiting list, which averages about 200 approved persons at all times. They then wait for a vacancy to occur before obtaining occupancy. Tr. p. 128.
29. Approximately 20% of the units contained in the subject properties become vacant in a given year. Once they become vacant, the units are repaired and made ready for reoccupancy within thirty days. Tr. p. 129.

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8. For further information about the terms and conditions of these leases, *see*, Applicant Ex. No. 16.

30. Upon assuming occupancy, the new tenant is assigned a social worker who develops a plan to assist the individual with whatever problems he/she may be experiencing. Applicant provides this and other related services (including employment placement and substance abuse treatment) at no cost to the tenant. Tr. pp. 118-119, 127, 129-130.
31. Applicant does not base the availability or quality of these services on a tenant's ability to pay. Nor does it base the desirability of a tenant's accommodations on the same considerations. Tr. pp. 118-119.

D. Applicant's Organizational & Financial Structure

32. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on February 20, 1986. Its Articles of Incorporation provide, *inter alia*, that : (1) it is organized exclusively for charitable, educational, religious and scientific purposes consistent with Section 501(c)(3) of the Internal Revenue Code; (2) No part of its net earnings shall inure to the benefit of, or be distributable to, the corporation's members, directors, or other private persons, except that the corporation shall be authorized to pay reasonable salaries for services rendered and to make payments and distributions in furtherance of its organizational purposes; (3) the corporation shall not devote any substantial part of its activities to political affairs; and (4) in the event of dissolution, the corporation shall first make provision for payment of its then-outstanding liabilities and then dispose of any remaining assets in a manner that fulfills its organizational purposes or distribute said assets to such organization or organizations that are organized and operated exclusively for charitable,

educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 1.

33. Applicant's by-laws provide, *inter alia*, that: (1) its purpose is to assist in preserving and expanding the availability of adequate single room occupancy (SRO) type housing for low income individuals or couples; (2) the corporation will focus the above efforts primarily in the City of Chicago; (3) the corporation's daily business affairs and property shall be governed by a Board of Directors (hereinafter the "Board"), which shall consist of between 20 and 25 members; (3) no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, any member of the Board; (4) No Board member shall receive any salary or other remuneration for serving as a Director; (5) the Board may, however, authorize such person to receive reimbursement for such travel and other out-of-pocket expenses as the Director may incur while discharging official Board business; (6) the Board may engage a Director or corporate officer to perform services for the corporation, on the condition that providing such services does not give rise to an impermissible conflict of interest; (7) the corporate officers shall be president, vice-president, treasurer, and secretary; and (8) applicant's day-to-day operations shall be administered by an executive director.
- Applicant Ex. No. 2.

34. Applicant has received an undated exemption from federal income tax from the Internal Revenue Service. The Service granted this exemption pursuant to Section 501(c) (3) of the Internal Revenue Code and based same on its conclusion

that applicant qualified as an organization described in Sections 509(a)(1) and 107(b)(1)(A)(vi) thereof. Applicant Ex. No. 3.

35. Applicant has no capital stock or shareholders. Its fiscal year begins January 1 of each year and ends December 31 thereof. Applicant Ex. Nos. 2 and 4.

36. Applicant's federal Return of Organization Exempt from Income Tax (IRS Form 990) indicates that applicant obtained revenue from the following sources during the period January 1, 1994 through December 31, 1994:

<b>SOURCE</b>	<b>AMOUNT<sup>9</sup></b>	<b>% OF TOTAL<sup>10</sup></b>
Contributions, Grants, Gifts & Similar Amounts Received	\$1,255,440.00	41%
Program Service Revenue	\$1,717,099.00	56%
Interest on Savings and Temporary Savings	\$ 65,159.00	2.1%
Net Rental Income	\$ 5,000.00	<1%
Other Revenue	\$ 7,500.00	<1%
<b>Total</b>	<b>\$3,050,198.00</b>	

Applicant Ex. No. 4.

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9. For detailed breakdowns of the exact amounts attributable to subgroups within the various categories, (i.e. government grants as a part of contribution revenue), *see*, Applicant Ex. No. 4.

10. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. Contributions, etc.) by the appropriate total. Thus, for example,  $\$1,255,440.00 / \$3,050,198.00 = .4116$  (rounded to 4 places past the decimal) or approximately 41%.

37. Applicant's expenses for the same period were as follows:

<b>SOURCE</b>	<b>AMOUNT<sup>11</sup></b>	<b>% OF TOTAL</b>
Program Services	\$1,992,280.00	77.45%
Management and General	\$ 422,133.00	16.40%
Fundraising	\$ 157,971.00	6.14%
<b>Total</b>	<b>\$2,572,384.00</b>	

*Id.*

E. Applicant's Operations

38. Applicant engaged in the following income-producing activities during 1994:

<b>ACTIVITY</b>	<b>INCOME DERIVED</b>	<b>% OF TOTAL</b>
Earned management fees, which applicant generated in its capacity as management agent for all of the subject properties. Applicant used most of these fees to pay the salaries of employees providing management services.	\$734,436.00	41%
Earned development fees, which applicant derived from overseeing projects in various stages of development. Applicant used these revenues to support the continued search for new development projects.	\$707,000.00	39%

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11. For detailed breakdowns of the expenditures within each category (e.g. construction and rehabilitation costs as a part of program service expenses), *see*, Applicant Ex. No. 4.

<b>ACTIVITY (CONT'D.)</b>	<b>INCOME DERIVED</b>	<b>% OF TOTAL</b>
Earned marketing fees, which applicant derived during the "lease up" [sic] of various buildings. Applicant used these revenues to support efforts to visit homeless shelters and search for new tenants.	\$ 39,960.00	2%
Earned relocation income, which applicant derived when it made efforts to relocate tenants on a temporary basis.	\$235,703.00	13%
Earned interest on savings & temporary cash investments.	\$ 65,159.00	4%
Earned net rental income from debt-financing related to the ground lease fee for the land on parcel 104-007.	\$ 5,000.00	<1%
Unspecified miscellaneous Activities	\$ 7,500.00	<1%
<b>Total</b>	<b>\$1,794,758.00</b>	

Applicant Ex. Nos. 4, 5.

39. Applicant also engaged in the following transactions with other legal entities during 1994:

<b>ORGANIZATION</b>	<b>TRANSACTION</b>	<b>AMOUNT INVOLVED</b>
HWALP	Rental of Facilities. Specific transaction involved arrangement wherein applicant leased office space in parcel 411-012 from HWALP.	\$ 57,000.00
HWALP	Unspecified Reimbursement Arrangements	\$108,611.00
MALP	Unspecified Reimbursement Arrangements	\$18,187.00
Magnolia	Unspecified Reimbursement Arrangements	\$83,486.00
4707	Unspecified Reimbursement Arrangements	\$ 88,606.00
Winthrop	Unspecified Reimbursement Arrangements	\$152,804.00
Red Door	Unspecified Reimbursement Arrangements	\$ 63,656.00
<b>TOTAL</b>		<b>\$572,350.00</b>

*Id.*

40. Applicant provides management and other administrative services to these limited partnerships, such as advancing funds (on an as needed basis) to cover any

costs associated with operating the subject properties. In exchange, applicant obtains management fees from these partnerships. Applicant Ex. No. 5.

41. Applicant also extended revolving credit loans, which bore interest at 8% per annum, to each of the six limited partnerships.<sup>12</sup> *Id.*

F. Organizational Structures of Applicant's Subsidiary Corporations

42. Applicant is the sole stockholder of three subsidiary corporations, the Harold Washington Apartment Corporation, the Malden Arms Corporation and the Winthrop Apartments Corporation (hereinafter collectively referred to as the "subsidiary corporations"). Applicant Ex. Nos. 5, 6, 7, 8, 9.

43. All of the subsidiary corporations are for-profit entities incorporated under the Business Corporation Act of Illinois. Applicant Ex. No. 5.

44. Applicant created each of the three subsidiary corporations for the purpose of serving as the general partner in one or more of the six individual limited partnerships (hereinafter collectively referred to as the "partnerships") that hold various interests in the subject properties. Applicant Ex. No. 5; Tr. pp. 25-26.

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12. For details about the balances due on these loans, which ranged from \$152,804.00 to \$18,187.00, *see*, Applicant Ex. No. 5.



G. Organizational & Financial Structures of Related Limited Partnerships

45. Harold Washington Apartment Corporation is a 1% general partner in HWALP. It also holds the same 1% interest in Malden, Magnolia, and Red Door. Applicant Ex. Nos. 5, 10, 13, 14.
46. Harold Washington Apartment Corporation is also the general partner (with an unspecified percentage interest) in 4707. Applicant Ex. No. 12.
47. Malden Arms Corporation is a 1% general partner in MALP. Applicant Ex. Nos. 5, 11.
48. Winthrop Apartments Corporation is a 1% general partner in Winthrop. Applicant Ex. Nos. 5, 15.
49. Applicant did not submit any evidence establishing the exact identities of most of the limited partners in each of the six partnerships. It did, however, provide a Leasing Certification form, wherein it indicated that National Equity Fund 1992 Limited Partnership, an Illinois limited partnership, was a limited partner in 4707. Applicant Ex. No. 23.
50. Applicant also sold shares in 4707 and the other partnerships to passive investors who then became limited partners pursuant to the Low Income Housing Tax Credit Program. Tr. p. 26.
51. Financial statements for HWALP, Magnolia, Winthrop, MALP and 5042<sup>13</sup> indicate that the major source of revenue for each of these limited partnerships

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13 . Applicant did not submit financial statements for Red Door.

during 1994 was rental income. Said statements further indicate that most of these partnerships' expenses for that period were attributable to administrative, maintenance and utility costs.<sup>14</sup> Applicant Ex. Nos. 19A, 21B, 23A, 25A, 30A.

H. The Federal Low Income Housing Tax Credit Program

52. The Low Income Housing Tax Credit Program originated in Section 42 of the Internal Revenue Code, 26 USC §42 (hereinafter the "Code"). Congress intended the tax credits provided in Section 42 of the Code to induce private entities to construct or rehabilitate housing for low and moderate income persons. Administrative Notice.
53. Each state is allocated approximately \$1.25 in tax credits per person of population in the state for purposes of this program. The credits must be allocated. Under Section 42(m)(1)(B)(iii) of the Code, each state designates an agency to allocate and monitor the credits. *Id.*
54. The agency responsible for performing these functions throughout the city of Chicago is the City of Chicago Department of Housing. Applicant Ex. 19B.
55. Each entity receiving tax credits pursuant to the Low Income Tax Program receives the credits for a period of ten years, but must set aside units for low and moderate income tenants and are subject to rent restrictions for a period of 15 years. Administrative Notice.
56. The Low-Income Housing Credit Schedule Allocation Certification (hereinafter the "Certification") pertaining to HWALP indicates that it received an allocation

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14. For further details about the financial structure of these partnerships, *see*, Applicant Ex. Nos. 19A (HWALP), 21B (MALP), 23A (4707), 25A (Magnolia) and 30A (Winthrop).

of Low Income Housing Tax Credits on May 1, 1989. The Certification further indicates that parcel 411-012 was placed in service on May 1, 1989 and that 100% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. 19B.

57. MALP's Certification indicates that it received an allocation of Low Income Housing Tax Credits on December 14, 1991. The Certification also indicates that parcel 104-007 was placed in service on October 1, 1991 and that approximately 98% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. No 21C.
58. 4707's Certification indicates that it received an allocation of Low Income Housing Tax Credits on December 14, 1991. The Certification also indicates that parcel 104-010 was placed in service on November 23, 1992 and that 100% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. No. 23B.
59. Magnolia's Certification indicates that it received an allocation of Low Income Housing Tax Credits on June 30, 1992. The Certification also indicates that parcel 110-019 was placed in service on January 1, 1993 and that approximately 98% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. No. 25B.

60. Winthrop's Certification indicates that it received an allocation of Low Income Housing Tax Credits on June 30, 1992. The Certification also indicates that that parcels 404-019 and 404-020 were placed in service on May 31, 1994 and that approximately 58% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. No. 30B.
61. Red Door's Certification indicates that it received an allocation of Low Income Housing Tax Credits on December 29, 1993. The Certification also indicates that parcels 404-024 and 404-025 were placed in service on March 30, 1995 and that approximately 77% of the units therein or the floor space thereof was devoted to low-income purposes. Applicant Ex. No. 30B.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcels from 1994 real estate taxes. Accordingly, under the reasoning given below, the Department's determinations that said parcels do not qualify for exemption under Public Act 88-660 and 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant

exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1 *et seq.* The omnibus provisions of that statute which govern the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

The General Assembly amended Section 200/15-65 via enactment of Public Act 88-660. This provision, effective September 16, 1994, provides, in relevant part, that property otherwise qualifying for exemption under Section 200-15/65 shall not lose its exemption because the legal title is held:

... (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986.<sup>15</sup>

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15. 6 U.S.C.A. § 42.

Here, applicant posits that this case should be decided under the above amendment. However, this argument fails to recognize that "[t]he status of the property for taxation and the liability to taxation [is] fixed on [January 1 of each assessment year], and property subject to taxation on assessment day in any year is liable for the taxes of that year even though it may subsequently, during that [any given] year, become exempt from taxation." Forest Preserve of DuPage County v. Department of Revenue, et al, 266 Ill. App.3d 264, 274 (2<sup>nd</sup> Dist. 1994) (citing People ex. rel. Kassabaum v. Hopkins, 106 Ill.2d 473, 476-77 (1985)).<sup>16</sup>

Public Act 88-660 did not become effective until *after* January 1, 1994. Consequently, the above principle mandates that the amendment does not govern whether the subject parcels are exempt from that year's real estate taxes. Therefore, said inquiry must be decided according to whether this applicant satisfies the statutory and common law requirements applicable to "institutions of public charity."

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16. It should be noted that this situation stands in contrast to situations wherein the applicant obtains exemption from real estate taxes for part of an assessment year based on a change in ownership or use. These situations arise pursuant to Section 200/9-185 of the Property Tax Code, the relevant portion of which states that:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 ILCS 200/9-185.

An analysis of that issue begins with recognition of the following rules of statutory construction, which our courts have consistently applied in property tax cases: first, a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex. rel. Nordlund v. Home for the Aged, 40 Ill.2d 91 (1968)); second, the party seeking exemption bears the burden of proof (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)); third, such party can not obtain exemption unless it presents clear and convincing evidence of conformity with all applicable statutory and common law requirements therefor (*id.*); fourth, the word "exclusively," when used in Section 200/15-65 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)) and fifth, "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

In this case, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). They have also ascribed to the

following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[.]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen at 157.

Applicant is a corporation and therefore, legally distinct from both its subsidiary corporations and the partnerships. The subsidiary corporations and the partnerships are in turn separate legal entities unto themselves, none which are the applicant herein. Thus, while the subsidiary corporations are the general partners in all of the partnerships, and the partnerships hold title to all of the subject properties except parcel 104-007, their respective interests in said properties are not dispositive of the present inquiry, which is whether *applicant itself* satisfies the pertinent requirements for charitable status.



Based on the financial information contained in applicant's federal tax return (Applicant Ex. No. 4) and its audit (Applicant Ex. No. 5), I conclude that applicant does not satisfy those requirements. These documents establish that applicant devoted 41% of its income-producing activities toward earning management fees, ostensibly from the partnerships it controls through its subsidiary corporations. Said documents further verify that applicant devoted 39% of these activities to earning development fees and another 2% of same to earning marketing fees associated with promoting rentals of the subject properties.

The financial information further discloses that applicant's transactional activities were, with one exception, limited to obtaining reimbursements from the six partnerships. These reimbursements provide a transactional nexus to the above-described management fees. Moreover, this nexus serves to link such reimbursements with the administrative and other services that applicant performs for the partnerships. Therefore, for all the preceding reasons, I conclude that applicant's primary function, when viewed in the context of the actual business reality of its relationship to these partnerships (as well as the subsidiary corporations that are the general partners thereof), is that of a non-exempt real estate management company.

Applicant also fails to qualify as an "institution of public charity" for other reasons. First, all of the subsidiary corporations that it controls are for-profit entities. As such, they inherently violate the fourth prong of the test articulated in Korzen, which prohibits those associated with the purported "institution of public charity" from profiting by means of the enterprise.

Furthermore, even though applicant did not completely establish the identities of all of the limited partners, the record does establish that at least one for-profit entity, National Equity Fund 1992 Limited Partnership (hereinafter "NEF") is a limited partner in 4707. The aforementioned rules of statutory construction require that all inferences support taxation. (*See*,

*supra* at p. 22). Thus, for present purposes, it is reasonable to assume that all of the limited partners are similar to NEF in that they are for-profit entities. Consequently, applicant's affiliation with such entities violates the fourth prong of the test articulated in Korzen, and therefore, prohibits applicant from obtaining exempt status.

Notwithstanding this assumption, the record contains abundant evidence establishing that the limited partnerships acquire their respective interests via non-exempt arm's length business transactions, to wit, sales of interests in the various limited partnerships. Such interests ostensibly permit the limited partners to profit from the enterprise by claiming their share of any operating losses associated with the subject properties and obtaining appropriate tax credits. Hence, both the actual sale of such interests and the benefits derived therefrom violate the prohibition against pecuniary profit contained in Korzen. Based on this and all the aforementioned considerations, I conclude that applicant fails to qualify as an "institution of public charity" within the meaning of Section 200/15-65. Therefore, the Department's determinations that the subject parcels do not satisfy the exempt ownership<sup>17</sup> requirement stated therein should be affirmed.

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17. In connection with this conclusion, I note that applicant holds legal title to only one of the six subject parcels and did not submit the ground lease which governs MALP's leasehold interest in parcel 104-007. The lack of such legal title raises questions as to whether applicant is in fact the "owner" of each parcel for property tax purposes, (*See, People v. Chicago Title and Trust*, 75 Ill.2d 479 (1979); *Chicago Patrolmen's Association v. Department of Revenue*, 171 Ill.2d 263 (1996); *Coles Cumberland Professional Development Corporation v. Department of Revenue*, 4-95-0913, (Fourth Dist., Nov. 7, 1996)). However, my conclusions that said properties are not exempt by operation of Public Act 88-660 and that applicant fails to qualify as an "institution of public charity" (as do its subsidiary corporations and related limited partnerships) render protracted analysis of title issues moot, and therefore, unnecessary for resolution of the present inquiry. These same conclusions render further discussion of any "ownership" issues associated with the ground lease (*see, City of Chicago v. Department of Revenue*, 147 Ill.2d 484 (1992)), likewise unessential.

The subject properties also fail to satisfy the statutory exempt use requirement. Applicant Ex. Nos. 19A, 21B, 23A, 25A and 30A, which are the financial statements pertaining to five of the six partnerships, establish that these entities derived most of their respective revenues from rental income. For this reason, and because applicant controls each of these partnerships through its subsidiary corporations, I conclude that the properties titled to these partnerships (parcels 411-012, 104-010, 404-019, 404-020, 110-019, 404-024 and 404-025) were primarily used to produce income for the applicant during 1994.

Our courts have consistently held such an inherently commercial use to be non-exempt, even where the applicant devotes any income derived therefrom to an exempt purpose. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). Based on these holdings, the Department's determinations that parcels 411-012, 104-010, 404-019, 404-020, 110-019, 404-024 and 404-025 were not in exempt use during 1994 should be affirmed.

One might argue that the above conclusion should not apply to parcel 104-007 because it was being developed for low-income housing throughout 1994. (See, Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987)). However, this argument fails to recognize that, unlike the Weslin Properties appellant, this applicant held a ground lease on parcel 104-007 and derived \$5,000.00 in rental income therefrom during the 1994 assessment year. As such, applicant's use of the ground situated on this particular parcel was, in reality, no different from the non-exempt uses detailed above.

Weslin Properties is also distinguishable from the present case in that the *sole* question at issue therein was whether applicant's activities (which consisted of holding various planning

meetings, constructing berms, etc.) satisfied the exempt use requirement. As such, that court did not address this applicant's major barrier to exemption, which is its failure to qualify as an "institution of public charity."<sup>18</sup> In light of this consideration, and because MALP does not qualify as an "institution of public charity" due to the for-profit nature of its limited partners, I must conclude that the improvement situated on parcel 104-007 does not qualify for exemption from 1994 real estate under Weslin Properties. Therefore, for all the above-stated reasons, the Department's determinations that all of the subject parcels were not in exempt use during 1994 should be affirmed.

Applicant seeks to defeat the above analysis by relying on its exemption from federal income tax. This exemption, standing alone or in combination with other factors, does not establish the requisite exempt use. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Furthermore, applicant's exemption from federal income tax establishes only that it is an exempt organization for purposes of the relevant sections of the Internal Revenue Code.

These sections do not preempt Section 200/15-65 or any of the other exemption provisions contained in the Property Tax Code. Consequently, neither these sections nor the exemption from federal income tax itself have the *res judicata* effect of conclusively establishing that this applicant qualifies as an "institution of public charity" within the meaning of Section 200/15-65.

Applicant also argues that the low income units contained within the parcels are operated on a charitable basis. Specifically, applicant points out that it does not evict anyone from these units for non-payment of rent, provides services to the tenants thereof at no cost and does not

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18. The Weslin Properties court did not address this issue because the parties agreed

make the amount, availability or quality of such services depend on a person's ability to pay. While these factors provide evidence of applicant's laudable endeavors, they do not overcome the fact that applicant's *own* primary function is that of a non-exempt real estate management company. Nor do they outweigh the plethora of evidence establishing that the subject parcels were not in exempt use during 1994. Consequently, such endeavors must be considered incidental to, and therefore legally insufficient to overcome, these non-exempt functions and uses. For this and all the aforestated reasons, I recommend that the Department's determinations denying the subject properties exemption from 1994 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Numbers 14-08-411-012, 14-17-104-010, 14-17-104-007, 14-17-110-019, 14-08-404-019, 14-08-404-020, 14-08-404-024 and 14-08-404-025 not be exempt from 1994 real estate taxes.

07/08/98  
Date

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Alan I. Marcus  
Administrative Law Judge

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that appellant qualified as an "institution of public charity." Weslin Properties, *supra*, at 584.